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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/532,392 | 08/05/2005 | Benedict Shia | 20518/59 (S-8490 US) | 1773 |
| 7590 Edward Scott Jarmolowicz Tyco Healthcare Group 15 Hampshire Street Mansfield, MA 02048 | | | EXAMINER MOULTON, ELIZABETH ROSE | |
| | | | ART UNIT 3767 | PAPER NUMBER |
| | | | MAIL DATE 11/06/2009 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---|------------------------------------|--|
| Office Action Summary | Application No. 10/532,392 | Applicant(s) SHIA ET AL. | |
| | Examiner ELIZABETH R. MOULTON | Art Unit 3767 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-21, 24-29 and 32-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 11-14, 20, 21, 23-29, 32, 34, 37 and 38 is/are allowed.
- 6) ☒ Claim(s) 15-19, 35 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/28/09; 8/7/09; 11/2/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. Claims 1-9, 11-14, 20, 21, 23-29, 32, 34, 37, and 38 are allowed.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15-19 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuson et al (US 3,957,082) in view of Kee et al (US 5,309,902).
3. Fuson teaches a valve comprising a housing (11) including a first end (29) and a second end (at 43), and a first passageway (21+55+15/17/19) that extends there along, the housing further including a first port (37) and a second port (39); and a valve member (45) disposed within the housing and moveable (rotatable) thereto, the valve member defining a portion of the first passageway (55) that includes a first opening (proximal opening) and a second opening (distal opening) having a greater dimension than the first opening (Fig 8), wherein the valve member is rotatable to establish sealed fluid communication between the first opening and either the first or second port, while maintaining continuous communication with the second opening and the first passageway.
4. Fuson does not teach a second passageway as claimed.

5. Kee teaches a nasogastric dual lumen catheter (73) with a connector (67) for attaching a suction control valve thereto. The connector housing (66) includes a first passageway (72) and a second passageway (77), which are separate. Fig 9. Any suction control valve may used with the connector 67.

6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the valve of Fuson as a suction control valve with the connection housing of Kee as a matter of simple substitution of one known device (medical control valves) for another. Additionally, the valve of Fuson provides extra safety features such as the visible indicia (Fig 4) to help the user determine which ports are connected to the passageway. In connecting the valve of Fuson with the connection housing of Kee, the second end (43) of the housing of Fuson would be inserted into the connector 67 of Kee.

Claim 15: the terms "relief port", "suction port" and "introduction port" are intended use terms and any port is capable of performing the functions or being used as a "relief" "introduction" or "suction" port. Claim 19: see flexible tubing 68 which is capable of flexing (slit 70 opens and closes and is flexible) as the valve is rotated.

Response to Arguments

7. Applicant's arguments filed 2 October 2009 have been fully considered but they are not persuasive. Regarding claim 15, applicant argues that the second passageway is not non-releasably fixed. Once assembled the passageway is non-releasably fixed. It is not proper to say that because a device is made of a set of assembled parts that that

those parts are not fixed together. Regarding claim 19, "configured to flex" is a capability or functional requirement. The tubing, which is flexible, is perfectly capable of performing the recited function whether or not it is disclosed or desirable to do so.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MOULTON whose telephone number is (571)272-9970. The examiner can normally be reached on part-time R and F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ELIZABETH R MOULTON/

Examiner, Art Unit 3767

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767